

KY SFSP APPEALS PROCEDURE

Section 1. Actions that May be Appealed in the Summer Food Service Program

- (1) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:
 - (a) Denial of an application for participation;
 - (b) Denial of a sponsor's request for an advance payment;
 - (c) Denial of a sponsor's claim for reimbursement except for late submission under 7 CFR§ 225.9(d)(5);
 - (d) Refusal by State Agency to forward to USDA FNS Regional Office an exception request for payment of a late claim or a request for an upward adjustment to a claim;
 - (e) A claim against a sponsor for remittance of a payment;
 - (f) Termination of the sponsor or a site;
 - (g) Denial of a sponsor's application for a site; or
 - (h) Denial of an FSMC's application for a registration or the revocation of a food service management company's registration.
- (2) Adverse actions not subject to appeal include the following adverse actions:
 - (a) FNS decisions on claim deadline exceptions and requests for upward adjustments to a claim;
 - (b) Determination of serious deficiency;
 - (c) Division's determination that corrective action is inadequate

Section 2. Notice of Action

- (1) The division must provide written Notice of Action to an institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals.
- (2) The Notice of Action shall give notice of the adverse action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible parties or responsible individuals may request an administrative review of the action.
- (3) The Notice of Action shall be sent by certified mail, return receipt requested for action taken pursuant to the Summer Food Service Program (7 CFR 225).
- (4) The Notice of Action shall state that the appeal shall be made within the timeframe set forth in Section 4 of this regulation and the appeal shall meet the requirements set forth in Section 3 of this regulation.

Section 3. Filing an Appeal

- (1) A food service company or program sponsor aggrieved by an adverse action of the division may appeal the adverse action by filing a timely request for an appeal. The request shall be filed with the Office of Legal, Legislative, and Communication Services, Department of Education, 300 Sower Blvd. 5th Floor, Frankfort, Kentucky 40601.
- (2) If the appellant wants a hearing, they must specifically request it in the request for appeal otherwise the administrative review official will consider the appeal based on written information only.

Section 4. Appeal Timelines

- (1) The request for appeal shall be postmarked or received by the division prior to midnight of the tenth working day after receipt of the notice of adverse action. If the tenth working day falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.
- (2) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.
- (3) Any information on which the division's action was based shall be available for inspection by the appellant from the date of receipt of the request for an appeal.

Section 5. Appeal Procedures

- (1) The division shall forward any request for appeal to the Director of Administrative Hearings Branch, Office of the Attorney General for the Commonwealth of Kentucky to designate an administrative review officer. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division.
- (2) During the appeal process, a program sponsor, responsible principal, responsible individual or food service management company shall:
 - (a) Self-represent;
 - (b) Be represented by legal counsel; or
 - (c) Be represented by another person.
- (3) The division's action shall remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal, and if the appeal results in overturning the division's decision, reimbursement shall be paid for eligible meals served during the appeal of termination. However, such continued operation shall not be allowed during the pendency of the appeal if the division's action is based on imminent danger to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State Agency shall so specify in its notice of action.

- (4) A hearing will be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The institution and the responsible principals and responsible individuals may refute the findings contained in the Notice of Action in person or by submitting written documentation to the administrative review official. The review official must be independent of the original decision making process. In order to be considered, written documentation must be submitted by the appellant within 7 days of submitting the appeal to the administrative review official. It must clearly identify the state agency action being appealed and must include a photocopy of the notice of action issued by the state agency.
- (5) If a hearing is requested:
- (a) The administrative hearing procedures of Kentucky Revised Statutes, Chapter 13B shall apply, except as provided in subsection (11) below.
 - (b) A representative of the state agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the designated hearing officer.
 - (c) Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing.
- (6) The designated administrative review official shall make a determination based solely on the information provided by the state agency and the appellant and based on federal and state laws, administrative regulations, and policies and procedures governing the program.
- (7)
- (a) The notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested;
 - (b) The hearing shall be held within fourteen (14) days from the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received;
 - (c) Within five (5) working days after the appellant's hearing, or within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record and inform the appellant of the outcome of the appeal by certified mail, return receipt requested; and
 - (d) The division's action shall remain in effect during the appeal process except if it is an appeal of termination. If it is an appeal of termination:
 - 1. Participating Summer Food Service Program sponsors and sites may continue to operate the program during the appeal, except as provided by subparagraph 3 of this paragraph;
 - 2. Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the division's decision; and

3. Continued program operation shall not be allowed if the division's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the division shall specify this in its notice of adverse action.
- (8) If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.
- (9) If an appellant's participation in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.
- (10) The determination by the administrative review official is the final administrative determination to be afforded to the appellant.
- (11) The final order of the administrative review official shall be subject to judicial review in accordance with Kentucky Revised Statutes Chapter 13B.140, except that:
 - (a) All appeals of a final order shall be filed in Franklin Circuit Court.